

CC 95-94

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

UACC MIDWEST, INC.
d/b/a UNITED ARTISTS
CABLE MISSISSIPPI
GULF COAST,
Complainant,

v.

File No. PA-91-0005

SOUTH CENTRAL BELL
TELEPHONE COMPANY,
Respondent

ORDER

Adopted: November 14, 1991; Released: November 20, 1991

By the Deputy Chief, Accounting and Audits Division,
Common Carrier Bureau:

1. By this Order we deny a motion by UACC Midwest, Inc., d/b/a United Artists Cable Mississippi Gulf Coast ("UACC") for Summary Disposition of the above-captioned complaint. We grant South Central Bell Telephone Company ("SCB") seven days within which to file a response to the complaint.

2. On September 10, 1991, UACC filed, pursuant to 47 U.S.C. § 224, the above-captioned pole attachment complaint against SCB regarding the pole attachment rates charged by SCB. SCB's response was due thirty days later, on October 10, 1991.¹ SCB did not file on that date. On October 25, 1991, UACC filed a Motion for Summary Disposition of the complaint.

3. On October 30, 1991, SCB filed an Opposition to UACC's Motion for Summary Disposition. SCB claims that it first learned of the complaint on October 30, 1991, through a telephone call to the Commission. SCB states that it did receive a service copy of the complaint dated September 9, 1991. According to SCB, because Section 1.47(b) of our Rules² permits service by mail to be made "on or before the day on which the document is filed", the service copy which SCB received may have been mailed at any time prior to UACC's filing its complaint. SCB claims, therefore, that the service copy cannot be deemed to be notice that a complaint had actually been filed.

4. SCB contends that it is entitled to receive notice from the Commission that a response is required, either through actual notice, pursuant to Section 208(a) of the

Communications Act, or through constructive notice by our issuing a public notice of the filing of a pole attachment complaint.³ SCB argues that due process of law requires that, in the absence of either actual or constructive notice, SCB cannot be held to have waived any rights in this proceeding. SCB wishes to respond to the complaint and asks that we deny UACC's motion.

5. On October 31, 1991, SCB filed, pursuant to Section 1.46, a motion for a thirty day extension of time to file a response to UACC's complaint. In its motion, SCB reiterates the reasons set forth in its Opposition to UACC's Motion for Summary Disposition for failing to file a timely response. In addition, SCB states that UACC will not be prejudiced by an extension of time because any relief that may be ordered in this proceeding will relate back to the date of filing of the complaint, and will include interest.

6. On November 1, 1991, UACC filed a Reply to SCB's Opposition to its Motion for Summary Disposition. UACC asserts that Section 208(a) of the Act does not apply to the procedures adopted for resolving pole attachment complaints. UACC states that the Commission suspended issuing public notices of pole attachment complaints in 1983, and that the lists that had been published were frequently published more than thirty days after the complaint and response were filed. UACC also notes that the public notices of the past "never delayed the response date, which always ran from the [c]omplaint." UACC concludes that because SCB admitted to having received a mailed service copy of the complaint which, according to UACC, included a copy of the complainant's fee transmittal form, SCB received actual notice. On November 4, 1991, counsel representing UACC filed a letter asking that we deny SCB's request for an extension of time and grant its Motion for Summary Disposition.

7. We reject SCB's claim that it failed to receive actual or constructive notice of UACC's complaint. Service of the complaint on SCB by mail on September 9, 1991 constituted actual notice of the complaint, and the requirements of due process were thereby satisfied. SCB is mistaken in its belief that it was entitled to delay its response until it was notified that the complaint had been accepted for filing. Section 1.1407(a) clearly states that "[r]espondent shall have 30 days from the date the complaint was filed within which to file a response."⁴ SCB's reliance on the service requirement of Section 208(a) is misplaced. Pole attachment complaints filed pursuant to Section 224 of the Act are not governed by Section 208(a).

8. It is not the Commission's practice to grant motions for extension of time routinely, particularly where the motion itself is untimely. However, we will permit SCB an extension of time of seven days from the date of release of this Order to respond to UACC's complaint. We are charged under Section 224 of the Communications Act to "regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable...."⁵ We believe that it is in the public interest to determine the justness and

¹ 47 C.F.R. § 1.1407(a).

² 47 C.F.R. § 1.47(b).

³ See *Opposition to Motion for Summary Disposition*, PA 91-0005, dated October 30, 1991 at 2, n.2, referring to Adoption

of Rules for the Regulation of Cable Television Pole Attachments, 72 FCC 2d 59, 75 (1979).

⁴ 47 C.F.R. § 1.1407(a) (emphasis added).

⁵ 47 U.S.C. § 224(b)(1).

reasonableness of the rate at issue in this case based on a full record. An extension of seven days will not prejudice UACC. We emphasize, however, that in the future we will expect parties to pole attachment complaints to respond to pleadings within our established deadlines.

9. Accordingly, IT IS ORDERED, pursuant to Section 1.46 of the Commission's Rules and to the authority delegated by Section 0.291 of the Commission's Rules, 47 C.F.R. §§ 1.46, 0.291, that SCB's Motion for Extension of Time IS GRANTED to the extent indicated herein.

10. IT IS FURTHER ORDERED, pursuant to Sections 0.291 and 1.1407 of the Commission's Rules, 47 C.F.R. §§ 0.291, 1.1407, that UACC's Motion for Summary Disposition IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Clifford M. Rand
Deputy Chief, Accounting and Audits Division
Common Carrier Bureau